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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/065,318

Applicant(s)

STEKETEE, THOMAS G.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 12-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 1-11 is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/02/02 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: .

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The drawing figures include only one figure (Fig. 1A) on the first page of drawings, Fig. 1B, 1C, 1D and 1E represent elements rather than separate figures. A second figure on page 2 of the drawings represents only one figure that has three elements. This second figure should be labeled as Fig. 2.

As discussed in a telephone conversation on September 24, 2003, the claims are directed to a device having an external pliable covering and no covering is shown in Fig. 2-4. Applicant should add the covering to Fig. 2-4 at his earliest convenience exactly as it appears in Fig. 1A with no modifications.

This application contains claims directed to the following patentably distinct species of the claimed invention:

Group I: Fig. 1A (incorporates Fig. 1A, 1B, 1C, 1D and 1E) and 2 (Fig. 2 incorporates all of Fig. 2A, 2B and 2C);

Group II: Fig. 3 and 4; and

Group III: Fig. 5.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim appears generic

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mr. Thomas Steketee on September 24, 2003 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-17 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The drawing figures include only one figure (Fig. 1A) on the first page of drawings, Fig. 1B, 1C, 1D and 1E represent elements rather than separate figures. A second figure on page 2 of the drawings represents only one figure that has three elements. This second figure could be labeled as Fig. 2. The drawings are objected to because the first and second pages of drawings should have only one drawing figure each and the elements represented by Fig. 1B, 1C, 1D, 1E, 2A, 2B and 2C should be labeled with a reference numeral. This reference numeral should be adequately explained in the written specification portion of the application. A proposed drawing

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correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. Also, appropriate amendments should be made to the written specification. The objection to the drawings will not be held in abeyance.

Drawing Fig. 2, 3 and 4 must also be amended to include the external pliable covering represented by reference numeral 2 in Fig. 1A, exactly as it is shown in Fig. 1A. This is also required.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the materials or inside materials which are being shipped or stored by the structural frame as stated in claim 1 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Claim 1 positively recites the materials or inside materials in the first line when it states that a frame enclosing materials is sought.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 1-11 are objected to because the materials or inside materials are positively recited when the first line of claim 1 states that a frame enclosing materials is sought.

It is suggested that applicant should carefully reconsider the language of claims 7 and 8. A first matter involves the term "vacuum pressure," a vacuum is the absence of any gas. The pressure force exerted on the frame is due to the external ambient or atmospheric pressure that squeezes the covering and frame due to the absence of an opposing internal pressure. It would be more accurate to identify the pressure as an external pressure. Note that claim 1 provides the

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vacuum by stating "vacuum filled" in line 1. A second matter involves the force that may be distributed from the frame to the material stored within the frame if the frame touches the material in two opposing positions such as from the top and bottom. The frame is under a compressive force and the resulting deflection would shrink the frame and the compressive force would go through to the material stored as a compressive force within this material. In such a case, the external force from atmospheric pressure would be transferred through the physical supports of the frame towards the material

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10 and 11 are indefinite because their preambles are directed to "modular pieces" rather than to "the vacuum filled structural frame" of claim 9 from which both claims 10 and 11 depend.

Claim 11 recites the limitation "the top and bottom piece" in line 1. There is insufficient antecedent basis for this limitation in the claim. Also, the top and bottom are two pieces and the word "piece" should be pluralized.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-3, 5-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by McAllister.

McAllister discloses a vacuum filled structural frame (top frame section 34 and bottom frame section 35) enclosing materials (thermal barrier 48) to be stored or shipped without isolation from vacuum, supporting an external pliable covering (membrane 22), for maintaining said inside materials and said external pliable covering is spaced apart relationship for the purpose of insulating said inside material from thermal conduction.

Re claims 2, 5 and 6, the means for minimizing the surface area of physical contact points for thermal conduction and projecting supports are columns (40, 41). The columns are rod-like in form. The columns are arranged in a rectangular array and are considered to be rectangular in form.

Re claim 3, the means for minimizing the surface area of physical contact points for thermal conduction and grid are grids (top frame member 34 having parallel rows of beams 36 and cross members 38 and bottom frame 35 of similar construction).

Re claim 7, insofar as the completely supporting limitation is understood, the frame is capable of supporting the covering under vacuum pressure completely so that none of the force applied by external pressure in the absence of internal pressure is transferred through the physical supports towards the stored material.

Re claim 8, the frame includes periodically spaced structural platforms (top frame section 34 and bottom frame section 35) and ribs (parallel rows of beams 36, 37).

Re claim 9, the frame includes modular pieces (top frame section 34 and bottom frame section 35).

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Re claim 11, the top and bottom pieces (top frame section 34 and bottom frame section 35) are identical and thus indistinguishable from each other, the pieces are capable of being used with a three-stepped rim.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAllister.

McAllister discloses the invention except for the pyramidal in form projecting support. McAllister's projecting supports are generally conical in form. It would have been obvious to modify the three-dimensional shape from conical in form to pyramidal in form as a matter of design choice. There is no criticality associated with the pyramidal shape claimed and such a modification is motivated by achieving a more appealing aesthetic appearance of the projecting supports.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAllister in view of Stahl.

McAllister discloses the invention except for the protruding rim and the extended structural wall and a three-stepped rim. Stahl discloses a series of stackable baskets having a structure in the form of a frame of open or apertured construction and including extended structural walls (top edges or margins 170, 172), protruding rims (stacking posts 74) and three step rims (nesting ledges 78, stacking platforms 92 and left and right inner panels 86, 82). It would have been obvious to modify the modular pieces to include the protruding rim, extended

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structural wall and the three-stepped rim in order to provide a more stable stacked frame which has the capability of adjusting the height or spacing between the surfaces of the frame.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035.

The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc